

Message Text

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ACTION EB-03

INFO OCT-01 ARA-10 ISO-00 SS-14 NSC-07 L-02 STR-01 DOTE-00

AID-05 CIAE-00 COME-00 FRB-01 INR-10 NSAE-00 RSC-01

TRSE-00 XMB-01 OPIC-02 SP-02 CIEP-01 OMB-01 DRC-01

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FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC 6592

C O N F I D E N T I A L SAN SALVADOR 4053

E.O. 11657 - GDS

TAGS: ELTM, EINV, BEXP, ES

SUBJ: SEIZURE OF US PROPERTY; GOES TAKEOVER OF IRCA:

SITREP

REF: A) SAN SALVADOR 3980; B) SAN SALVADOR 3977

1. SUMMARY: IRCA ATTORNEY TRIGUEROS AGAIN CALLED AT EMBASSY AND DISCUSSED APPARENTLY DEFINITIVE GOES TAKEOVER OF IRCA WITH ECONOFFS AND COMMATT. MEANWHILE A SERIES OF NEWS REPORTS HAVE APPEARED UNANIMOUSLY FAVORABLE TO THIS GOES ACTION AND A TRUNCATED VERSION OF A GOES PRESS RELEASE DEFENDING ITS ACTION REPORTEDLY APPEARED IN THE WALL STREET JOURNAL. THE AMBASSADOR SPOKE TO ACTING FONMIN CASTANEDA ABOUT IRCA AND EMBOFFS PLAN FURTHER DISCUSSIONS WITH RESPONSIBLE GOES RAILROAD MANAGER LATE OCT 8. END SUMMARY.

2. IRCA LAWYER DR TRIGUEROS CALLED AT EMBASSY 7 OCT AND DISCUSSED

GOES TAKEOVER OF IRCA WITH ECONOFFS AND COMMATT. TRIGUEROS REPORTED THAT HE CONTACTED IRCA PRESIDENT WEBER ON SATURDAY 5 OCT FROM MIAMI WHERE TRIGUEROS WAS VISITING FOR OTHER REASONS. WEBER REFERRED TRIGUEROS TO EX-IRCA GEN MANGER CURE AFTER HAVING BRIEFLY REVIEWED SITUATION
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WITH HIM. WEBER REPORTEDLY PLANNED TO LODGE A PROTEST OF THIS

"EXPROPRIATION" WITH THE DEPARTMENT OF STATE OCTOBER 7.

3. TRIGUEROS SUMMARIZED HIS VIEWS ON GOES ACTION BY DESCRIBING IT AS A CONCERTED ACT OF THE EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES OF THE SALVADORAN GOVERNMENT. HE CLAIMED THAT IN CONVERSATIONS WITH BOTH SALVADORAN PRESIDENT MOLINA AND WITH FONMIN BORGONOVO THEY HAD APPROVED THE GOES TAKEOVER OF IRCA WITHOUT ALLOWANCE FOR COMPENSATION AFTER HAVING REACHED THE CONCLUSION THAT THE DEPARTMENT OF STATE WILL NOT SUPPORT ANY COMPLAINTS WHICH IRCA'S OWNERS MIGHT RAISE. ACCORDING TO TRIGUEROS THEY BELIEVE THAT IRCA'S FAILURE TO PERFORM ADEQUATELY, AS OUTLINED IN THE GOES TAKEOVER DECREE, WAS PERSUASIVE AND CONCLUSIVE.

4. TRIGUEROS ALSO INSISTED THAT PRESIDENT MOLINA SPOKE DEFIANTLY WHEN ASKED HOW HE WOULD REACT TO US PROTESTS SHOULD THEY OCCUR. ACCORDING TO IRCA'S LAWYER, PRESIDENT MOLINA IS PREPARED TO ACCEPT US PROTESTS AND EVEN SUGGESTED THAT AS THE US IS LOSING ITS IMPORTANCE ANYWAY, PROTESTS MIGHT MERELY SERVE TO PUSH EL SALVADOR INTO OTHER HANDS, NOT EXCLUDING THOSE OF THE SOCIALIST BLOC. (COMMENT: FROM AVAILABLE INFORMATION, AND TAKING INTO CONSIDERATION TRIGUEROS' POSITION AS IRCA'S LAWYER, WE FIND IT DIFFICULT TO DETERMINE THE SIGNIFICANCE OF THIS REPORTED COMMENT OR THE PRECISE FEELINGS WHICH MOLINA MAY HAVE TRIED TO CONVEY.

5. ON THE LEGAL FRONT, DR TRIGUEROS INSISTED IN HIS OPINION THAT IRCA HAS NO VALID RECOURSE WITHIN EL SALVADOR (SEE PARA 1 OF REF-TEL. LEGISLATIVE ACTS, IN HIS VIEW, ARE SUBJECT ONLY TO JUDICIARY REVIEW ON QUESTIONS OF THEIR CONSTITUTIONALITY. HE SAYS PRESIDENT MOLINA CONSULTED INFORMALLY WITH THE SUPREME COURT WHICH GAVE HIM A FAVORABLE OPINION BEFORE HE SENT HIS DECREE TO THE ASSEMBLY. THE ASSEMBLY, WHICH PASSED THE DECREE INTO LAW AFTER FOUR HOURS OF DEBATE OCTOBER 3, HAS REFERRED IT TO THE SUPREME COURT FOR REVIEW. IF DETERMINED TO BE CONSTITUTIONAL, TRIGUEROS' CONTENTION IS THAT IRCA HAS NO FURTHER MEANINGFUL RECOURSE UNDER SALVADORAN LAW. TRIGUEROS THEREFORE CONTENDS THAT IRCA'S ONLY VIABLE DEFENSES ARE DIPLOMATIC PROTESTS BY THE US OR THE ADMITTEDLY IMPROBABLE USG ESPOUSAL TO THE INTERNATIONAL COURT OF JUSTICE IN THE HAGUE.

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6. ACTING FONMIN CASTANEDA ASSURED THE AMBASSADOR ON OCT 7 THAT THE GOES WANTS IRCA'S LAWYER TO TAKE ANY LEGAL STEPS HE DEEMS NECESSARY HERE, SUGGESTING THAT IRCA CAN, DESPITE TRIGUEROS' PESSIMISTIC VIEW, CONTEST THE GOES DECREE OF TAKEOVER. AS TRIGUEROS ALSO IS AN IMPORTANT LEGAL ADVISOR TO THE FOREIGN MINISTRY, IT IS OBVIOUSLY STILL UNCLEAR WHETHER OR NOT IRCA HAS ANY MEANINGFUL LEGAL RECOURSE, ALTHOUGH WE BELIEVE IT SHOULD

MAKE A SERIOUS EFFORT TO SEEK SUCH RECOURSE IN ORDER TO ENABLE US TO DETERMINE WHAT COURSE USGOV SHOULD TAKE IN THIS MATTER.

7. AS FORESEEN IN REF B, TRIGUEROS ALSO CONTENDED THAT IRCA IS NOT "BROKE" AND THAT TOTAL ASSETS EXCEED LIABILITIES. HE SYSTEMATICALLY CHALLENGED VIRTUALLY ALL GOES CONTENTIONS OF IRCA'S NON-PERFORMANCE GIVEN AS REASONS FOR ITS TAKEOVER.

8. ACCORDING TO INFORMATION RECEIVED HERE, A TRUNCATED VERSION OF THE GOES PRESS RELEASE REFERRED TO IN REF B APPEARED IN OCTOBER 8'S WALL STREET JOURNAL. THIS VERSION DELETED REFERENCES TO THE "UNIQUENESS" OF THE IRCA SITUATION (ORIGINALLY INCLUDED TO COUNTER ANY "EXPROPRIATION" FEARS THE GOES ACTION MIGHT PRODUCE IN POTENTIAL US INVESTORS) AND REFERENCES TO GOES ASSUMPTION OF IRCA LIABILITIES.

9. EMBOFFS ARE MEETING WITH LIC JORGE ROCHAC OF CEPA, THE GOES AGENCY NOW RESPONSIBLE FOR IRCA LATE OCT 8; THIS MEETING WILL BE REPORTED LATER.

10. A COPY OF THE EXECUTIVE DECREE ON THE IRCA TAKEOVER WILL BE POUCHED OCT 9.
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